

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

COLOPLAST A/S,

Plaintiff,

V.

GENERIC MEDICAL DEVICES, INC.,

Defendant.

CASE NO. C10-227 BHS

ORDER GRANTING
PLAINTIFF'S MOTION FOR
PREJUDGMENT INTEREST AND
ACCOUNTING

This matter comes before the Court on Plaintiff Coloplast A/S's ("Coloplast")

motion for prejudgment interest and an accounting (Dkt. 218). The Court has considered the pleadings filed in support of and in opposition to the motion and the remainder of the file and hereby grants the motion for the reasons stated herein.

I. PROCEDURAL HISTORY

On February 8, 2010, Coloplast filed a complaint for patent infringement against

Defendant Generic Medical Devices, Inc. (“GMD”) alleging that GMD was indirectly

infringing United States Patent No. 6,638,211 (the “‘211 Patent”) and United States

Patent No. 7,621,864 (the “‘864 Patent”) (collectively “Patents-in-Suit”). Dkt. 1, ¶¶ 9-17.

1 On April 17, 2012, the Court began a seven-day jury trial. On April 30, 2012, the
2 Jury returned a verdict finding that (1) Coloplast failed to prove direct infringement of the
3 '211 Patent, (2) Coloplast proved direct and indirect infringement of the '864 Patent, (3)
4 the Patents-in-Suit were not invalid, (4) Coloplast was entitled to a reasonable royalty
5 rate of \$55 per device, and (5) Coloplast proved total damages of \$159,775. Dkt. 200.

6 On June 7, 2012, Coloplast filed a motion for an award of prejudgment interest
7 and an accounting. Dkt. 218. On June 18, 2012, GMD responded. Dkt. 229. On June
8 22, 2012, Coloplast replied. Dkt. 231

9 II. DISCUSSION

10 A. Prejudgment Interest

11 The general rule is that "prejudgment interest should ordinarily be awarded." *Gen.*
12 *Motors Corp. v. Devex Corp.*, 461 U.S. 648, 655 (1983). In this case, GMD has failed to
13 provide a sufficient reason not to follow the general rule. Therefore, the Court grants
14 Coloplast's motion and awards prejudgment interest beginning on February 8, 2010.

15 The parties dispute the interest rate. "The ascertainment of the prejudgment
16 interest rate is within the sound discretion of the district court." *Kaufman Co., Inc. v.*
17 *Lantech, Inc.*, 926 F.2d 1136, 1144 (Fed. Cir. 1991). Coloplast requests that the Court
18 impose the Washington statutory rate of 12%. Dkt. 218 at 3–4. GMD contends that the
19 Court should impose the prevailing commercial rate of interest over the relevant time
20 period because prejudgment interest is compensatory, not punitive. Dkt. 229 at 2–4. The
21 Court agrees with GMD and imposes an interest rate of 3.25%.

1 The parties also disagree as to whether interest should be compounded annually.

2 The Court finds that compounding is appropriate to properly compensate Coloplast.

3 **B. Accounting**

4 Coloplast requests that the Court order GMD to provide an accounting of
5 infringing sales during periods not considered by the jury. Coloplast contends that,
6 during trial, GMD only provided sales data up to December 31, 2011, and that the jury
7 did not consider evidence of any possible sales in 2012. Dkt. 218 at 6–7. GMD argues
8 that Coloplast did not seek an accounting in any pleading and, therefore, the Court should
9 deny the request for such relief. The Court finds that Coloplast sufficiently plead a
10 request for damages resulting from any infringing sales, and if infringing sales were made
11 during 2012, Coloplast should be properly compensated. Therefore, the Court grants
12 Coloplast’s motion on this issue and GMD shall promptly provide an accounting for
13 relevant infringing sales in 2012.

14 **III. ORDER**

15 Therefore, it is hereby **ORDERED** that Coloplast’s motion for prejudgment
16 interest and an accounting (Dkt. 218) is **GRANTED**. Coloplast is entitled to
17 prejudgment interest from February 8, 2010 at a rate of 3.25% compounded annually, and
18 GMD must promptly provide an accounting of 2012 sales.

19 Dated this 9th day of August, 2012.

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BENJAMIN H. SETTLE
United States District Judge